

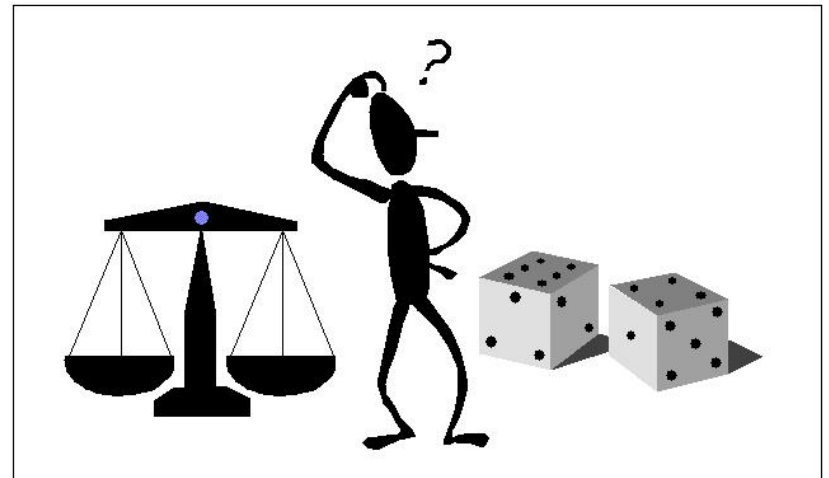


Corporate Pandemic Influenza Planning, Legal Liabilities, Risk Assessment and Mitigation

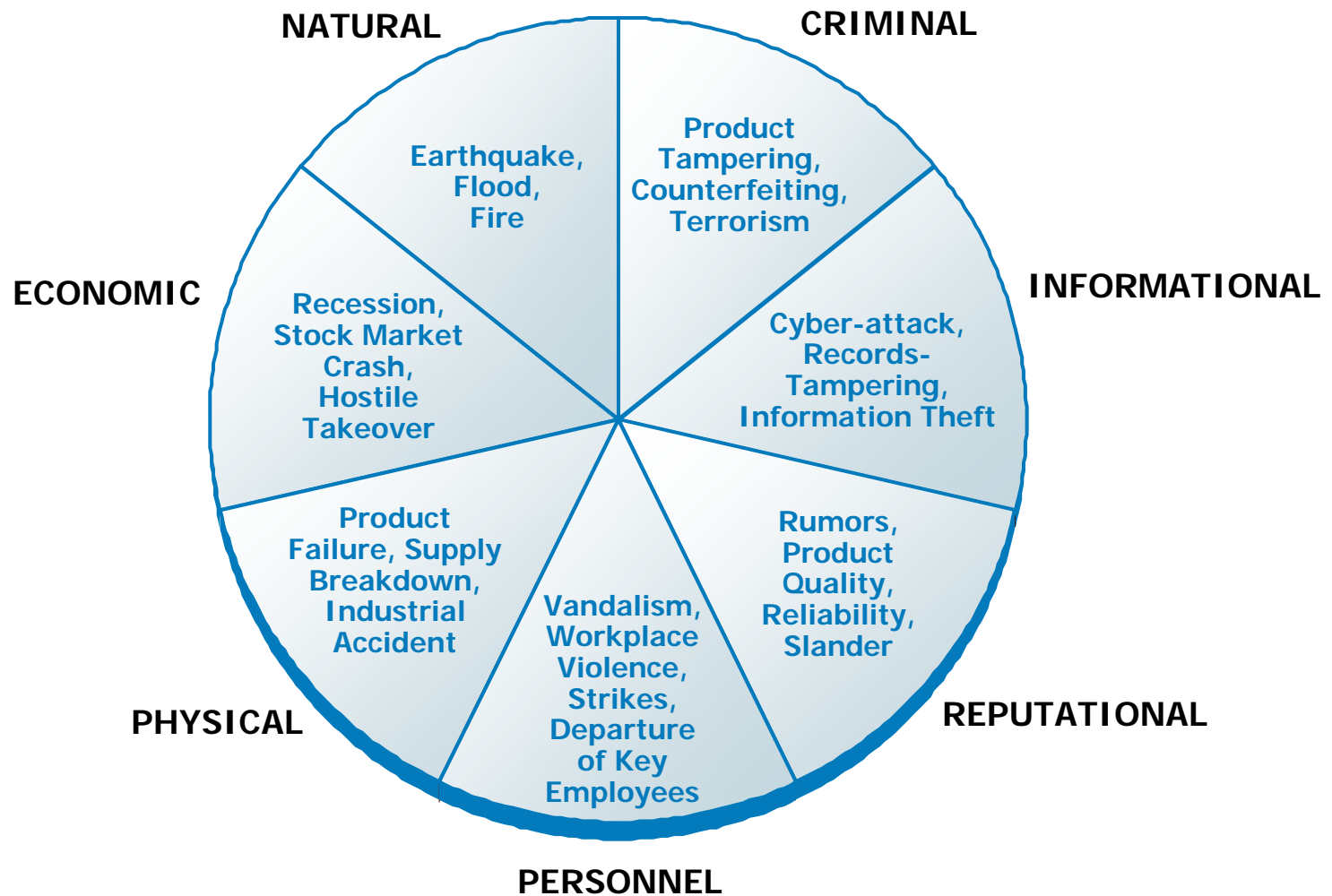
**Presented by
Cheryl A. Falvey**

Pandemic Influenza Planning

- How do companies assess risks and mitigate liabilities?
- What are the relevant legal considerations with respect to the key pandemic influenza planning issues?



Corporate Risk Assessment



Categorizing Corporate Risks



“Foreseeability” of Pandemic Risks

The present situation is markedly different for several reasons. First, the world has been warned in advance. For more than a year, conditions favoring another pandemic have been unfolding in parts of Asia.

World Health Organization, September 2005

- Foreseeable consequences of worst case pandemic scenarios
 - ◆ Economic losses
 - ◆ Supply chain disruptions
 - ◆ Employee absenteeism
 - ◆ Quarantines and travel restrictions
 - ◆ Demand shocks in certain business sectors

Demonstrating Due Diligence

- Determine the “standard of care” and scope of potential liability
- Ensure access to accurate, authoritative and current information
- Monitor the adequacy and accuracy of your public statements
 - ◆ Protect reputation
 - ◆ Reduce exposure to potential adverse shareholder, employee, customer and/or vendor actions
- Build in deadlines for deliverables and accountability
- Record due diligence in planning process
- Protect privilege where available/necessary

Determining the “Standard of Care”

- Benchmark what other companies are doing
- Analogize to similar situations
 - ◆ Hurricane Katrina
 - ◆ Midwest outbreak of mumps
 - ◆ Loss of electrical grid in the NE
- Consider what others may argue in hindsight what the standard of care “should have been”
 - ◆ International, National and Local planning guidance
 - National Strategy for Pandemic Influenza Implementation Plan
 - ◆ AFSCME Petition for Emergency Temporary Standard
 - Seeks to require employers in the health care industry and other first responders to provide specific and comprehensive protections to essential personnel

Employment Considerations

- Medical leave policies
 - ◆ What are the practical incentives/disincentives of your current plans?
 - ◆ Do they comply with applicable law and regulations?
- Occupational safety and health requirements
 - ◆ How will you handle quarantine?
 - ◆ Should you provide additional ventilation and respiratory equipment?
- Medical privacy concerns
 - ◆ Surveillance and reporting
- Wage and hour issues

Beware Of Assurances Of Safety

Encourage Workers To Stay Home When They Are Sick

Explain New Policies And Procedures

Educate Your Workforce Regarding Risks

Enlist Cooperation

Supply Chain Considerations

- Contract analysis
 - ◆ Limits of liability
 - ◆ Best efforts clauses
 - ◆ Impossibility exclusions
 - ◆ “Act of God” clauses
 - ◆ Exclusivity provisions
- Insurance coverage
- Policies and “commitments”

“[Insert Company Name] is committed to doing business with suppliers who comply with local and other applicable legal requirements relating to health safety.”

or

“[Insert Company Name] enlists supplier support in ensuring that [company] consistently meets and exceeds customer expectations of quality, cost and delivery.”

Government Relations

- Identify public policies and initiatives that directly impact your business and planning activities
- Intervene to ensure local, state, and federal authorities will respond to your business requirements
- Interface with government authorities during disaster